

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

BRADFORD TECHNOLOGIES, INC., ) Case No. 3:11-CV-04621 (EDL)  
Plaintiff, )  
v. )  
JOHN DAVID BIGGERS, an individual; and )  
DOES 1-50, ) Dept./Place: Courtroom E – 15<sup>th</sup> Floor  
Defendants. ) Judge: Magistrate Judge Elizabeth D. Laporte  
AND ALL RELATED COUNTERCLAIMS. )  
\_\_\_\_\_  
**{PROPOSED} AMENDED  
PROTECTIVE ORDER**

The Stipulated Protective Order (Dkt. 55) in this matter is hereby amended as follows:

13       1. Any document, or portion thereof, and any other form of evidence or discovery  
14 contemplated under Rules 26 through 36 of the Federal Rules of Civil Procedure may be  
15 designated by a Party as *CONFIDENTIAL* or *HIGHLY CONFIDENTIAL* in accordance with the  
16 provisions of this Amended Protective Order (the “Order”). “Confidential Information” as used  
17 in this Order refers to documents, things, and information designated as either *CONFIDENTIAL*  
18 or *HIGHLY CONFIDENTIAL*. By designating a document as *CONFIDENTIAL* or *HIGHLY*  
19 *CONFIDENTIAL*, a Party represents that it has made a bona fide, good faith determination that  
20 the information is, in fact, entitled to the designation given it.

21       2. Documents, things, and information may properly be marked as *CONFIDENTIAL*  
22 under this Order if a Party reasonably and in good faith believes that it contains trade secrets,  
23 intellectual property and other confidential information that the disclosing Party in good faith  
24 believes is not publicly known that would be valuable to third parties, including but not limited  
25 to the disclosing Party's actual or potential competitors, and that the disclosing Party would not  
26 normally reveal, and has not revealed, to third parties without an agreement to maintain it in  
27 confidence.

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1       3. The following documents, things, and information may properly be marked as  
 2 *HIGHLY CONFIDENTIAL* under this Protective Order: (a) Confidential Information the  
 3 disclosure of which to an adverse Party or the directors, officers, and employees of the adverse  
 4 Party is reasonably believed to cause the disclosing Party competitive injury through its  
 5 advertent or inadvertent use, and for which treatment of the information as *CONFIDENTIAL* is  
 6 insufficient to protect against that competitive injury, and (b) a Party's trade secrets, intellectual  
 7 property or other information, including computer source code, that the producing Party believes  
 8 in good faith to be so commercially sensitive or confidential that disclosure to persons other than  
 9 those authorized poses a risk of impairing the interests of the producing Party, and for which  
 10 treatment of the information as *CONFIDENTIAL* is insufficient to protect against that injury. In  
 11 no event shall a Party designate as *HIGHLY CONFIDENTIAL* information that the producing  
 12 Party does not itself treat as confidential in the usual course of its business. The Parties  
 13 acknowledge and agree that the designation of information as *HIGHLY CONFIDENTIAL* can  
 14 make litigation more difficult, costly and time consuming and, therefore, this designation shall be  
 15 used as sparingly as possible.

16       4. Confidential Information must be designated as follows:

17           a. Documents or copies provided to another Party in response to discovery  
 18 requests containing Confidential Information may be designated by any Party, or by any  
 19 third party who produces documents or information in response to a subpoena or  
 20 otherwise, as either *CONFIDENTIAL* or *HIGHLY CONFIDENTIAL* by marking the page  
 21 or the pages on which the Confidential Information appears with the legend  
 22 *CONFIDENTIAL* or *HIGHLY CONFIDENTIAL*. Electronic information shall likewise  
 23 bear such designation on the CD or other physical medium on which the electronic  
 24 information is found.

25           b. In lieu of marking the original of a document which contains Confidential  
 26 Information prior to inspection, a Party may orally designate documents being produced  
 27 for inspection as *CONFIDENTIAL* or *HIGHLY CONFIDENTIAL*, thereby making them  
 28 subject to this Order. However, copies of such documents ultimately produced must be

1 marked *CONFIDENTIAL* or *HIGHLY CONFIDENTIAL* at the time any such documents  
2 are supplied to inspecting counsel in order to make such copies subject to this Order.

3 c. Confidential Information disclosed at a deposition, whether by testimony  
4 or use of a document or thing, may be designated as *CONFIDENTIAL* or *HIGHLY*  
5 *CONFIDENTIAL* by clearly indicating on the record at the deposition the specific  
6 testimony containing Confidential Information that is to be made subject to the provisions  
7 of this Order. Documents, things, or information not designated on the record of the  
8 deposition as *CONFIDENTIAL* or *HIGHLY CONFIDENTIAL* may thereafter be  
9 designated as such by notifying the other Parties in writing within fourteen (14) days of  
10 the receipt of the final un-signed transcript of such deposition. During that fourteen (14)  
11 day period (and any preceding period during which a rough draft of the transcript may  
12 have been received), the deposition transcript and any associated documents, things, and  
13 information shall be treated as *HIGHLY CONFIDENTIAL*. If a designation is made, each  
14 Party shall attach an appropriate notification of that fact to the deposition transcript and  
15 each copy thereof in its possession, custody or control.

16 d. Confidential Information contained in the body or attached exhibits of  
17 affidavits, declarations, motions, memoranda, briefs or other papers filed with the Court  
18 may be designated by prominently marking the cover, first page, or any page or pages of  
19 such documents containing Confidential Information with the legend *CONFIDENTIAL* or  
20 *HIGHLY CONFIDENTIAL*. Copies of such items shall be filed and maintained by the  
21 Court under seal pursuant to the provisions of Paragraph 9 hereof.

22 e. Tangible objects constituting or containing Confidential Information may  
23 be designated by affixing to the object or its container a label or tag marked  
24 *CONFIDENTIAL* or *HIGHLY CONFIDENTIAL*.

25 f. Notwithstanding any other provisions of the Order, any Party may  
26 designate as *CONFIDENTIAL* or *HIGHLY CONFIDENTIAL* any testimony of and/or  
27 documents produced by that Party's agent, sales representative, or technical or business

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1 consultant, or by any third party who produces documents or information in response to a  
2 subpoena or otherwise.

11       5.      Confidential Information shall be used only for purposes of this litigation and not  
12 for any other purpose or function, including without limitation any business, copyright  
13 registration, patent prosecution, competitive or governmental purpose or function, and shall be  
14 disclosed and made available only to the following:

15                   a.        Outside Counsel of the Parties, and employees of such attorneys to whom  
16                   it is necessary that the material be shown for purposes of this litigation; court reporters  
17                   and videographers receiving or transcribing the documents, things or information in  
18                   connection with official reporting (for example, at a deposition or a hearing); the Court  
19                   and Court staff; and outside photocopy, imaging, database, graphics, design, computer  
20                   simulation modeling, exhibit production services, to the extent necessary to assist such  
21                   Outside Counsel for purposes of this litigation.

1                   consultants may not be currently employed by any Party, or any affiliates, parents,  
2                   subsidiaries, officers, directors, managers, members, agents, representatives or employees  
3                   of any Party. Such experts and consultants likewise may not have been formerly  
4                   employed by any Party or any affiliates, parents, subsidiaries, officers, directors,  
5                   managers, members, agents, representatives or employees of any Party, nor have  
6                   formerly served as an independent contractor for any Party or any affiliates, parents,  
7                   subsidiaries, officers, directors, managers, members, agents, representatives or employees  
8                   of any Party, within a five (5) year period prior to their engagement in this litigation.

9                   Provided, however, that such retained or employed experts and consultants agree  
10                  not to use the Confidential Information for any purpose other than assisting in the  
11                  preparation of this matter for trial. The Parties further agree that they will not hire as  
12                  employees or independent contractors the experts or consultants retained in this action to  
13                  whom Confidential Information of the other Party was disclosed for a period of three (3)  
14                  years following the termination of this action.

15                  Counsel for the Party intending to disclose Confidential Information to an expert  
16                  or consultant shall first inquire whether that expert or consultant is currently affiliated  
17                  with, employed by, or consulting with any known competitor of the Party that produced  
18                  the Confidential Information, including without limitation, any individuals or companies  
19                  that develop, market, or distribute real estate valuation, appraisal or broker price opinion  
20                  software, including spreadsheet programs. If so, the Party intending to make such  
21                  disclosures shall also give written notice to the producing Party at least fourteen (14) days  
22                  prior to such intended disclosure setting forth the name of the consultant or expert, the  
23                  identity of the competitor, the affiliation of the expert or consultant with the competitor  
24                  and the specific nature of the work that such expert or consultant is performing for the  
25                  competitor. The producing Party shall have the right to object during this 14 day period  
26                  and no Confidential Information will be disclosed to the consultant or expert witness  
27                  during this time period. If the Parties are unable to reach an agreement on the issue  
28                  within ten (10) days of the objection, the objecting Party must file a motion with the

1 Court at the end of the ten day period seeking to have the issue resolved as soon as  
 2 reasonably possible. No Confidential Information shall be provided to the consultant or  
 3 expert witness while the motion is pending at the Court.

4 Any such expert or consultant, prior to receiving Confidential Information, shall  
 5 sign an acknowledgment in the form of Exhibit A attached hereto and shall be subject to  
 6 this Order.

7 d. A third-party witness in the above-captioned case not otherwise authorized  
 8 to view Confidential Information may view information designated *CONFIDENTIAL* in  
 9 question during that third-party witness' testimony at a deposition, hearing, or trial in the  
 10 above-captioned case, provided that: (1) the disclosure is made solely for the purpose of  
 11 directly advancing the questioning Party's claims or defenses, and for no other purposes  
 12 whatsoever; (2) the third-party witness is not permitted to retain the information  
 13 designated *CONFIDENTIAL* after the third-party witness is examined regarding the  
 14 information designated *CONFIDENTIAL*; and (3) the third-party witness is explicitly  
 15 informed that this Order forbids him or her to disclose the information designated  
 16 *CONFIDENTIAL* except as permitted under the Order and that he or she is subject to the  
 17 Court's jurisdiction for purposes of enforcing this Protective Order. A deposition witness  
 18 may review the entire deposition transcript and exhibits thereto in order to review and  
 19 sign pursuant to Federal Rule of Civil Procedure 30(e); however, the disclosing Party  
 20 may object to the deponent further reviewing the information designated  
 21 *CONFIDENTIAL* marked as a deposition exhibit. If an objection is made, either Party  
 22 may seek relief from the Court and the third-party witness shall not be permitted to  
 23 review the information designated *CONFIDENTIAL* until the Court has ruled or  
 24 disclosing Party withdraws its objection.

25 e. Authors, addressees and recipients who appear on the face of the  
 26 designated document.

27 f. Documents and information designated *HIGHLY CONFIDENTIAL* may  
 28 not be disclosed to receiving Parties or their officers, directors, shareholders, members,

1        managers or employees, unless the Party producing the information designated *HIGHLY*  
2        *CONFIDENTIAL*, or the Party designating a non-party's document production,  
3        deposition, or other discovery response as *HIGHLY CONFIDENTIAL*, agrees in writing  
4        to allow such access or the Court orders such access.

5                g.        Documents and information designated *CONFIDENTIAL* may be  
6        disclosed to receiving Parties and their officers, directors, shareholders, members,  
7        managers and employees with whom it is necessary to consult regarding this litigation,  
8        provided such persons sign an acknowledgement in the form of Exhibit A hereto. Upon  
9        written request, counsel will provide copies of the acknowledgement signed by such  
10      persons.

11                6.        If the Party to whom *CONFIDENTIAL* or *HIGHLY CONFIDENTIAL* documents,  
12        things or information has been produced believes that any of the documents, things or  
13        information has been improperly designated, the receiving Party may at any time request the  
14        Party making the designation to cancel or change the designation with respect to any documents,  
15        things or information and to agree that thereafter such document, thing or information will no  
16        longer be subject to certain or all of the provisions of this Order. Such request shall be in writing  
17        and shall particularly identify the information that is contested, including the reasons supporting  
18        the contentions. If the Party which produced the documents, things, or information objects to the  
19        requested declassification, the party seeking the declassification must file and serve a motion  
20        bringing the issue to the Court's attention and requesting declassification. The Party making the  
21        designation shall have the burden of establishing that the particular document, thing, or  
22        information is properly classified as *CONFIDENTIAL* or *HIGHLY CONFIDENTIAL* as defined  
23        above. The party prevailing on any such motion shall be awarded its reasonable attorneys' fees  
24        and costs incurred in bringing or defending the motion.

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1       7.     No copies of documents, things or information designated as *CONFIDENTIAL* or  
2 *HIGHLY CONFIDENTIAL* shall be received, kept, or maintained by persons other than those  
3 authorized to do so under this Order. All persons to whom Confidential Information is disclosed  
4 shall use the same care and discretion to avoid disclosure of the Confidential Information as the  
5 receiving Party uses with its own similar information that it does not wish to disclose to prevent  
6 the unauthorized or inadvertent disclosure of any information designated as Confidential  
7 Information.

8       8.     When a Party gives notice to another Party that, during an oral deposition,  
9 *CONFIDENTIAL* or *HIGHLY CONFIDENTIAL* documents, things or information are expected  
10 to be produced, used or discussed during the deposition, then only persons authorized to receive  
11 such information pursuant to this Order will be allowed to attend that portion of the deposition  
12 on behalf of the receiving Party.

13       9.     To the extent it is necessary to file with the Court any material containing or  
14 referring to any Confidential Information, the Parties shall comply with the applicable rules for  
15 filing such documents under seal with the Court.

16       10.    Subject to the Federal Rules of Evidence, Confidential Information may be  
17 offered in evidence at trial or any court hearing in open court, provided that the Party offering the  
18 evidence gives notice, practicable under the circumstances, to counsel for the Party or person that  
19 designated the document or information as *CONFIDENTIAL* or *HIGHLY CONFIDENTIAL*.  
20 Any producing Party or non-party may move the Court for an order that the evidence is to be  
21 received under conditions to prevent its disclosure to persons not entitled under this Order to  
22 have access to it. The Court shall determine whether the proffered evidence should continue to  
23 be treated as *CONFIDENTIAL* or *HIGHLY CONFIDENTIAL* and, if so, what appropriate  
24 protection, if any, should be afforded such evidence at the trial or hearing.

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1       11. Each Party's production of any Confidential Information shall be solely for  
 2 purposes of and use in this action, and those documents, things and information shall not be used  
 3 for any other purpose or in any other action. If any other such document(s), thing(s), or  
 4 information properly becomes a matter of public record without an order of Court causing the  
 5 same to be retained under seal or retained in an otherwise confidential manner, then the Parties  
 6 will have the same rights to utilize the document, things, or information as the public at large  
 7 under the First Amendment.

8       12. By stipulating to this Order, the Defendants in this action do not waive, and  
 9 specifically reserve, all defenses based upon lack of jurisdiction.

10       13. Within thirty (30) days after the conclusion of this action and any appeal taken  
 11 herefrom, all documents, things, and other materials produced or designated as containing  
 12 Confidential Information, and all reproductions thereof, shall be returned to the Party who  
 13 produced them. Any Party may, at their option, destroy annotated copies or summaries of  
 14 Confidential Information in lieu of returning those copies and summaries to the producing Party.  
 15 Notwithstanding the foregoing, Outside Counsel for the Parties shall be permitted to retain one  
 16 copy of (a) materials created during the course of the lawsuit, including attorney annotations and  
 17 other work product; (b) work product of testifying or non-testifying consultants/experts;  
 18 (c) materials made a part of the Court record, or which have been filed under seal with the Court;  
 19 (d) all depositions and Court transcripts, including exhibits; and (e) summaries of depositions.  
 20 Such file copies shall be maintained only by Outside Counsel subject to the terms of this Order.

21       14. Notwithstanding the termination of this action, persons who have had access to  
 22 Confidential Information shall remain subject to the terms of this Order.

23       15. This Order may be modified by written agreement of the Parties or by further  
 24 order of the Court. Each Party shall also have the right to petition the Court to modify this Order  
 25 or for additional protection under Federal Rule of Civil Procedure 26(c).

26       16. Non-parties may, after agreeing to be bound by the terms of this Amended  
 27 Protective Order, (i) designate deposition transcripts and any documents or information they  
 28 produce, whether voluntarily or by subpoena, as *CONFIDENTIAL* or *HIGHLY CONFIDENTIAL*

1 to the same extent and in the same manner as the Parties to this litigation, and such documents or  
2 information shall be treated by the Parties to this litigation in the same manner as documents or  
3 information so designated by a Party; and (ii) intervene in this litigation to enforce the provisions  
4 of this Order as if they were a Party.

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6 Dated: June 24, 2014.

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8 So stipulated:

9 HOPKINS & CARLEY

10

11 /s/ Christopher A. Hohn

12 Allonn E. Levy  
13 Christopher A. Hohn  
14 Attorneys for Plaintiff and Counterclaim  
Defendants Bradford Technologies, Inc.,  
AppraisalWorld, Inc. and Jeffrey Bradford

15 ANDERSON & KARRENBERG

16

17 /s/ Heather M. Sneddon

18 Thomas R. Karrenberg  
19 Heather M. Sneddon  
20 Attorneys for Non-Parties Metro National  
Financial, LLC, Metro National Valuation, LLC,  
and Metro National Title, Inc.

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ELIZABETH D. LAPORTE  
United States Magistrate Judge

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

BRADFORD TECHNOLOGIES, INC., ) Case No. 3:11-CV-04621 (EDL)  
Plaintiff, )  
v. ) **AGREEMENT TO BE BOUND BY  
AMENDED PROTECTIVE ORDER**  
JOHN DAVID BIGGERS, an individual; and )  
DOES 1-50, ) Dept./Place: Courtroom E – 15<sup>th</sup> Floor  
Defendants. ) Judge: Magistrate Judge Elizabeth D. Laporte  
AND ALL RELATED COUNTERCLAIMS. )

This is to certify that I have read and understand the Amended Protective Order (the "Order") in the above-captioned case and agree: (a) to be bound by the terms and conditions set forth in the Order; (b) not to reveal to anyone, other than appropriate persons listed in paragraph 5 of the Order, any documents, things or information designated under the Order as ***CONFIDENTIAL*** or ***HIGHLY CONFIDENTIAL***; and (c) to utilize such documents, things and information solely for purposes of and in connection with the above-captioned action.

Dated: \_\_\_\_\_

### Signature

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**Printed Name**